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11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 (WESTERN DIVISION)

14 **MEI LING,**

15 Plaintiff,

16 — v. —

17 **CITY OF LOS ANGELES,**
18 **CALIFORNIA; COMMUNITY**
19 **REDEVELOPMENT AGENCY OF**
20 **THE CITY OF LOS ANGELES;**
Redrock NoHo Residential, LLC; JSM
21 Florentine, LLC; Legacy Partners
Residential, Inc.; FPI Management, Inc.;
22 and Guardian/KW NoHo, LLC,

23 Defendants.
24

Case No. 2:11-cv-7774-SVW

**PLAINTIFF'S OPPOSITION TO
LEGACY PARTNERS
RESIDENTIAL, INC.'S MOTION
FOR SUMMARY JUDGMENT**

Hearing: October 22, 2012, 1:30 p.m.
Judge: Hon. Stephen V. Wilson
Courtroom: Number 6, 2nd Floor

Complaint Filed: Sept. 20, 2011
Trial Date: Nov. 27, 2012

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INTRODUCTION

Defendant Legacy Partners Residential, Inc.’s (“Legacy”) Motion for Summary Judgment (Dkt. 150) on Plaintiff Mei Ling’s retaliation claims rests on factually unsupported assertions and inadmissible hearsay statements concerning Ms. Ling’s attempts to obtain information about her applications for tenancy in an affordable apartment unit at the multi-family housing development called NoHo 14, which Legacy managed. Legacy has not sustained its burden on summary judgment to establish the absence of any genuine factual disputes material to its asserted justification for calling the police in order to have Ms. Ling removed from the NoHo 14 premises. A reasonable jury could find from the evidence that Legacy’s true purpose in calling the police was to interfere with Ms. Ling’s efforts to obtain housing, in violation of the Fair Housing Act, 42 U.S.C. § 3617, and the California Fair Employment and Housing Act (“FEHA”), Cal. Gov’t Code 12955.7.¹ Because Legacy has not established that it is entitled to judgment as a matter of law on Ms. Ling’s retaliation claims, its Motion for Summary Judgment should therefore be denied.

Ms. Ling has a mobility impairment and uses a wheelchair at all times. She has presented evidence that she applied for tenancy in an affordable apartment unit at NoHo 14 starting in 2008 and that she made visits to the NoHo 14 development in 2009 in order to follow up on the status of her applications, view unit configurations to determine whether any modifications would be needed should she be offered a unit, ensure that the management

¹ Legacy states that it also moves for summary judgment on Ms. Ling’s reasonable accommodation claims with respect to The Lofts development and incorporates by reference the Motion for Summary Judgment filed by Defendant RedRock NoHo Residential, LLC. *See* Legacy Mem. (Dkt. 150-1) at 5. Ms. Ling likewise incorporates by reference her concurrently filed Opposition to RedRock NoHo Residential, LLC’s Motion for Summary Judgment as her grounds for opposing Legacy’s request for summary judgment on Ms. Ling’s reasonable accommodation claims against Legacy.

1 staff were aware of her reasonable accommodation requests, and accompany
2 other wheelchair users seeking to view the property's wheelchair-accessible
3 units. On two separate visits, in October 2009 and November 2009, Legacy's
4 property manager called the police to have Ms. Ling and her companions
5 removed from the premises. A reasonable jury could easily infer from the
6 record evidence that this conduct constituted impermissible interference with
7 Ms. Ling's exercise of fair housing rights that are protected under state and
8 federal law.

9 Legacy has asserted a justification for one but not both of these
10 incidents. Summary judgment as to the first incident in October 2009, for
11 which Legacy has no explanation, is therefore improper. Summary judgment
12 must also be denied as to the November 2009 incident because Legacy has
13 failed to meet its burden under Rule 56 of the Federal Rules of Civil
14 Procedure to establish the absence of any factual disputes concerning its
15 asserted justification. According to Legacy, its property manager at NoHo 14
16 decided to call the police because Ms. Ling and her companions, who were
17 also in wheelchairs, were intimidating Legacy staff, refused to leave when
18 asked, and were blocking the entrance and exit to the property. The only
19 evidence identified by Legacy to support this explanation consists of hearsay
20 testimony by the property manager, who lacked personal knowledge of the
21 events reported to him by his staff. Even if Legacy's evidence were
22 admissible, it is disputed by Ms. Ling's deposition testimony and other record
23 evidence, as set forth herein. The existence of significant factual disputes
24 concerning the validity of Legacy's asserted justification precludes summary
25 judgment on Ms. Ling's retaliation claims arising out of the November 2009
26 incident when police were called to remove her from NoHo 14.

27 For the reasons set forth in detail below, Ms. Ling respectfully requests
28 that the Court deny Legacy's Motion for Summary Judgment on her retaliation

claims under the Fair Housing Act, 42 U.S.C. § 3617, and FEHA, Cal. Gov't Code Sec. 12955.7.

FACTUAL OVERVIEW

Plaintiff Mei Ling suffers from spinal conditions including spinal stenosis and spondylosis, which is a painful condition resulting from the degeneration of the spine's intervertebral disks. Ling Dep. 8:13-15, 8:18-20, 8:22-23.² She has been non-ambulatory and has used a wheelchair since 2006. *Id.* 10:16-21, 10:24-11:2.

Because of her mobility impairment, Ms. Ling requires assistance with personal care and other routine tasks. Ling Dep. 20:23-24, 25:8-23, 26:8-13, 29:24-25, 40:23-25, 41:10-19, 45:1-6, 45:14-23. Her physical disability prevents her from obtaining employment. Ms. Ling cannot earn an income because of her disability and subsists on a small monthly stipend from Los Angeles County's General Relief program, in the amount of \$221. Ling Dep. 179:14-21. Because of her financial circumstances, Ms. Ling cannot afford to live in market-rate housing without government assistance. Ling Dep. 179:5-13, 179:19-21. Ms. Ling thus requires an affordable dwelling unit that is also wheelchair-accessible.

Ms. Ling became homeless in or around June 2006. Ling Dep. 30:10-18. Since that time, she has sought to obtain affordable, wheelchair-accessible housing in CRA-supported buildings located in various parts of the City.

In April 2007, Ms. Ling obtained a Housing Choice Voucher (formerly denominated and still commonly called a Section 8 voucher), administered by the Housing Authority of the City of Los Angeles ("HACLA"). Ms. Ling's Housing Choice Voucher currently provides her approximately \$1,400 per month to apply to the rental of a two-bedroom apartment unit at The

² The cited excerpts to Ms. Ling's deposition testimony are included as Exhibit 24 to the concurrently filed Declaration of Mei Ling.

1 Piedmont. Ling Dep. 62:7-15; Ling Decl. ¶ 9.

2 Ms. Ling's current dwelling unit is not fully accessible to her. Among
3 other barriers, she cannot use the shower, cannot use the toilet without
4 assistance, and cannot utilize all features of the kitchen. Ling Dep. 34:17-23,
5 37:1-11, 37:14-43:3. In addition, public transportation opportunities to and
6 from The Piedmont are limited and difficult for Ms. Ling to access. Ling
7 Decl. ¶ 25.

8 NoHo 14 (formerly called JSM Florentine) is a multi-family residential
9 property. Legacy Statement of Uncontroverted Facts (Dkt. 150-4) ¶ 5.
10 Pursuant to a covenant between the Community Redevelopment Agency of
11 Los Angeles ("CRA") and the owner of NoHo 14, a certain number of units
12 must be rented at rates that are affordable to low-income tenants. *Id.* ¶ 7.
13 Defendant Legacy managed NoHo 14 from October 2009 until approximately
14 September 2010. *Id.* ¶ 6.

15 Since 2008, Ms. Ling has submitted multiple applications for tenancy at
16 the NoHo 14 development. Ling Dep. 91:14-20; Ling Decl. ¶¶ 47, 49, 74 &
17 Ex. 22. Ms. Ling made frequent visits to NoHo 14 to see the unit
18 configurations so that she could evaluate potential modifications that might be
19 necessary to make a unit accessible in light of her specific needs, to inquire
20 about the status of her applications, and to convey her reasonable
21 accommodation requests. Ling Dep. 103:15-17, 104:1-5, 104:14-23, 105:2-6,
22 105:15-17; Ling Decl. ¶ 54. On her visits to NoHo 14, Ms. Ling was
23 frequently accompanied by a caseworker and/or other wheelchair users
24 seeking housing. Ling Dep. 103:15-22. Ms. Ling was informed on various
25 occasions that her name was on an interest list or a waitlist. Ling Dep.
26 107:16-22. She understood these terms to have the same meaning. *Id.* at
27 107:23-108:1.

28 During two such visits, representatives of Legacy called the police with

1 the purpose of having Ms. Ling and her companions removed from the
2 premises. The first occasion was on or around October 10, 2009. Ling Decl. ¶
3 86. The second occasion was on or around November 1, 2009. *Id.*

4 For the October 2009 incident, Ms. Ling was present at NoHo 14 with
5 Ali Jahanabad and Sandy Varga. They were given a partial tour by a leasing
6 agent named Maria Elizarraraz. Ling Decl. ¶ 87; Ling Dep. 122:16-19. While
7 they were touring units on the fifth floor, Maria received a telephone call and
8 left Ms. Ling, Ms. Varga, and Mr. Jahanabad on the fifth floor while she went
9 to her office. After leaving to take the telephone call, Maria never returned for
10 the group. Ling Decl. ¶ 87.

11 After it became clear that Maria was not going to return, Ms. Ling and
12 her companions decided to go back downstairs. When they reached the
13 mezzanine level, they saw Maria at her desk. They asked her why she had left
14 them upstairs and asked her to resume the tour, indicating that they wanted to
15 see specific additional units. *Id.* ¶¶ 88-89. Maria refused to continue the tour
16 at that time, stating that she had an appointment. *Id.*

17 Ms. Ling and her companions decided to wait for Maria to finish her
18 appointment in order to resume the tour on that day. They waited for Maria in
19 the lobby, expecting that Maria would find them and resume the tour. *Id.* ¶ 89.
20 After approximately one hour, a man named Max came by and told them that
21 they should leave because the police had been called. *Id.*; Ling Dep. 123:1-4,
22 125:13-14. The group waited an additional hour, but Maria never returned,
23 and the group did not see any police officers. Ms. Ling later called the police
24 station and learned that Legacy had called the police and that officers arrived
25 at the development after she and her companions had left. Ling Dep. 123:19-
26 25; Ling Decl. ¶ 89.

27 During the November 2009 visit, Ms. Ling was present at NoHo 14 with
28 Mr. Jahanabad, Ms. Varga, Cynde Soto, and Jolene Dalcour. Ling Dep.

1 111:20-112:9.³ Legacy representative Michael Hunter was giving the group a
 2 tour of the development. During the tour, Mr. Hunter was unable to answer all
 3 of the group's questions, and he therefore made several phone calls to the
 4 property manager, Thomas Meredith. Ling Dep. 114:9-13. Mr. Hunter
 5 mistakenly suspected that someone was recording him because one member of
 6 the group was having difficulties using her smartphone, which at one point
 7 emitted a bright light. Ling Decl. ¶ 92; Ling Dep. 120:15-121:2. No one from
 8 the group was recording Mr. Hunter during the tour. Ling Decl. ¶ 92; Ling
 9 Dep. 120:15-121:6.

10 After he showed us two units, Mr. Hunter told the group that he had to
 11 take them downstairs. Ling Decl. ¶ 93. Because of the group's size and the
 12 fact that Ms. Ling, Mr. Jahanabad, and Ms. Varga were all in wheelchairs,
 13 they had to take separate elevators. *Id.*; Ling Dep. 116:6-9. Ms. Ling took the
 14 second elevator. *Id.* When she exited the elevator, two police officers were
 15 already present in the lobby. Ling Dep. 115:21-22, 117:2-4, 117:10-17,
 16 118:12-15; Soto Decl. ¶¶ 7-9.

17 Two more police officers arrived soon afterwards. The police told Ms.
 18 Ling and her companions they were there to escort the group out of the
 19 building. The group proceeded to leave the building. Ling Dep. 117: 8-11.
 20 Outside, Ms. Ling heard Mr. Meredith state to the police that they called them
 21 because Legacy did "not want to do business with" Ms. Ling and her
 22 companions. Ling Decl. ¶ 94.

23 At no point during the October 2009 or November 2009 visits to NoHo
 24 14 did Ms. Ling or anyone accompanying her on the visit block any entrance
 25

26 ³ During her deposition Ms. Ling at first mistakenly stated that the second
 27 incident when Legacy called the police occurred in October 2009. The first
 28 incident was in October 2009, and the second incident, also addressed in Mr.
 Meredith's Declaration, took place in November 2009. Ling Dep. 124:18-22;
 Ling Decl. ¶¶ 86, 90.

or exit to NoHo 14, or otherwise interfere with the coming and going of tenants or anyone else. Ling Decl. ¶ 95; Soto Decl. ¶ 9.

LEGAL STANDARD

Summary judgment should be denied unless the record “shows that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law.” Fed. R. Civ. Pro. 56(a). A material fact is one that could “affect the outcome of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A “genuine issue” exists “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.*

At the summary judgment stage, the Court may not make credibility determinations or weigh conflicting evidence and must draw all inferences “in the light most favorable to the nonmoving party.” *See T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626, 630–31 (9th Cir.1987); *see also Hunt v. Cromartie*, 526 U.S. 541, 552 (1999) (holding that at summary judgment “the nonmoving party’s evidence is to be believed, and all justifiable inferences are to be drawn in that party’s favor” (internal quotation marks and brackets omitted)).

The moving party bears the burden of demonstrating the absence of a genuine issue of material fact for trial, with evidence that would be admissible. *Anderson*, 477 U.S. at 256; Fed. R. Civ. P. 56(c)(1), (4). Only if the moving party makes this showing does the burden shift to the non-moving party to identify “specific facts showing that there is a genuine issue for trial.” *Pom Wonderful LLC v. Welch Foods, Inc.*, 737 F. Supp. 2d 1105, 1108 (C.D. Cal. 2010) (internal quotation marks omitted).

ARGUMENT

Legacy’s motion for summary judgment must be denied because Legacy has not established the absence of any genuine disputed facts material

1 to Ms. Ling's retaliation claims under the Fair Housing Act and FEHA.

2 **I. Framework for Establishing a Retaliation Claim under the Fair**
 3 **Housing Act and FEHA**

4 Section 818 of the Fair Housing Act makes it "unlawful to coerce,
 5 intimidate, threaten, or interfere with any person in the exercise or enjoyment
 6 of, or on account of his having exercised or enjoyed, or on account of his
 7 having aided or encouraged any other person in the exercise or enjoyment of,
 8 any right granted or protected by section 3603, 3604, 3605, or 3606 of this
 9 title." 42 U.S.C. § 3617; *see also* Cal. Gov't Code § 12955.7 (establishing
 10 verbatim prohibition under FEHA against interference with the exercise of
 11 rights guaranteed by Sections 12955 and 12955.1 of that Act). The anti-
 12 retaliation provisions in the Fair Housing Act and FEHA are construed and
 13 applied identically. *Walker v. City of Lakewood*, 272 F.3d 1114, 1125-26 (9th
 14 Cir. 2001).⁴

15 The elements of a prima facie case of retaliation under the Fair Housing
 16 Act and FEHA are: (1) the plaintiff engaged in protected activity; (2) the
 17 defendant subjected her to an adverse action; and (3) a causal link exists
 18 between the protected activity and the adverse action. *See Walker*, 272 F.3d at
 19 1128.⁵ If the plaintiff establishes a prima facie case, the burden then shifts to
 20 the defendant to articulate a legitimate, non-discriminatory reason for its
 21 conduct. *Id.* If the defendant "articulates such a reason, the plaintiff bears the
 22 ultimate burden of demonstrating that the reason was merely a pretext for a
 23 discriminatory motive." *Id.* Thus, if Ms. Ling's evidence creates a genuine

24 _____
 25 ⁴ Legacy agrees that the two claims are "substantially identical." Legacy
 Mem. at 7 n.3.

26 ⁵ It is not necessary to prove an underlying housing discrimination claim. *See*
 27 *Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1063 (9th Cir. 2004) (holding
 28 that establishing a violation of § 3604 is not a prerequisite to stating a claim
 under § 3617); *Walker*, 272 F.3d at 1125 ("[E]ven parties who may not bring
discrimination claims under the FEHA may bring **retaliation** claims.").

dispute as to whether Legacy's asserted justification is pretextual, her retaliation claims must proceed to trial. *Id.* at 1131 (reversing summary judgment for defendant where plaintiff's evidence placed city's motivations for taking adverse action against plaintiff in dispute).

II. Plaintiff Has Established a Prima Facie Case of Retaliation.

As the Ninth Circuit held in *Walker*, 42 U.S.C. § 3617 applies broadly “to reach all practices which have the effect of interfering with the exercise of rights under the federal fair housing laws.” 272 F.3d at 1129 (quoting *United States v. Hayward*, 36 F.3d 832, 835 (9th Cir. 1994)). Conduct such as encouraging others in the exercise of fair housing rights, conducting fair housing investigations of an apartment complex, and facilitating others' efforts to assert and vindicate their fair housing rights all constitute activity that is protected under the Fair Housing Act. *See Walker*, 272 F.3d at 1128; *Edwards*, 356 F.3d at 1063. FEHA's fair housing provisions protect virtually identical activity, in addition to even broader categories of conduct that are not explicitly enumerated in the Fair Housing Act. *Compare* 42 U.S.C. § 3604 with Cal. Gov't Code Sec. 12955; *see also Hous. Rights Ctr. v. Sterling*, 404 F. Supp. 2d 1179, 1194 (C.D. Cal. 2004) (recognizing that the protections of FEHA exceed those of the federal Fair Housing Act).

Ms. Ling engaged in protected activity in submitting applications for tenancy in an affordable unit at NoHo 14, making other visits to the property to follow up on the status of her applications and express her reasonable accommodation requests, and assisting others seeking housing at NoHo 14. The exercise of one's right to apply and be considered for tenancy in a dwelling unit of one's choice without discrimination, including the requesting of reasonable accommodations that will eliminate accessibility barriers, is one of the core guarantees of § 3604. *Binns v. City of Marietta Hous. Assistance Program*, No. 107-cv-0070, 2010 WL 1138453, at *8 (N.D. Ga. Mar. 22,

1 2010) (denying motion for summary judgment where jury could find that
 2 defendant “retaliated against Plaintiff in its treatment of her in the application
 3 process and in its rejection of her individual application”); *Matarese v.*
 4 *Archstone Pentagon City*, 795 F. Supp. 2d 402, 442-43 (E.D. Va. 2011), *vac’d*
 5 *in part on other grounds by* 468 F. App’x 283 (4th Cir. 2012) (plaintiff’s
 6 efforts to renew her lease and request a reasonable accommodation constituted
 7 protected activity); *cf. Hood v. Midwest Sav. Bank*, 95 F. App’x 768, 779 (6th
 8 Cir. 2004) (plaintiff engaged in activity protected by § 3605 in exercising his
 9 right to apply for a loan). HUD similarly interprets § 3617 as prohibiting
 10 interference with efforts to access “benefits provided . . . in connection with
 11 the sale or rental of a dwelling” and “activities designed to make other persons
 12 aware of, or encouraging such other persons to exercise, rights granted or
 13 protected by this part.” 24 C.F.R. § 100.400(c)(1), (4).

14 Legacy does not dispute that one purpose of Ms. Ling’s visits to the
 15 property was to inquire about her position on the affordable housing waitlist.
 16 Legacy Mem. at 7. Instead, it asserts without any evidentiary support at all
 17 that Ms. Ling’s activity was not protected because it “amounted to a campaign
 18 of harassment and badgering of Legacy employees at NoHo 14.” *Id.*; *see also*
 19 *id.* at 8 (asserting without support that Ms. Ling “harass[ed], interrogat[ed],
 20 and badger[ed] . . . Legacy staff” and “literally ‘staked out’ the management
 21 office”). Legacy does not cite to any record evidence to support these
 22 accusations, which in any event are more relevant to the issue of Legacy’s
 23 asserted justification for calling the police, addressed *infra* Part III.B.

24 Indeed, the only “facts” submitted by Legacy that might even remotely
 25 support its claim that Ms. Ling’s conduct constituted harassment rather than
 26 protected activity is inadmissible hearsay by Mr. Meredith. Mr. Meredith
 27 states generally that “employees at the property routinely *reported to me* that
 28 they felt Ms. Ling’s repeated appearances and questioning on subjects that had

1 already been addressed were intimidating” and that on one occasion while Mr.
 2 Hunter was giving Ms. Ling and her companions a tour, Mr. Hunter “*told me*
 3 he shortened the tour because the group did not honor his request to stop
 4 recording him, and *he informed me* he felt uncomfortable because of that.”
 5 Meredith Decl. (Dkt. 150-3) ¶¶ 10, 12 (emphasis added).

6 These statements are inadmissible as evidence of what Mr. Meredith’s
 7 employees thought and felt, in other words for the truth of the matter asserted
 8 by Mr. Meredith. Fed. R. Evid. 801(c), 802. These statements might be
 9 admissible as evidence of Mr. Meredith’s state of mind when he called the
 10 police on the single occasion discussed in Paragraph 13 of his Declaration, *see*
 11 Fed. R. Evid. 803(3)—an issue discussed in more detail *infra* Part III.B—but
 12 they are not admissible as evidence of how the employees with whom Ms.
 13 Ling interacted perceived her activity. These statements by Mr. Meredith are
 14 therefore inadequate to establish an absence of genuinely disputed facts. *Cf.*
 15 Fed. R. Civ. P. 56(c)(4) (“An affidavit or declaration used to support . . . a
 16 motion must . . . set out facts that would be admissible in evidence.”).

17 Even if Legacy had produced admissible evidence to support its claim
 18 that Ms. Ling was not pursuing her tenancy applications during these visits
 19 and was therefore not engaged in protected activity, which it has not, Ms.
 20 Ling’s deposition testimony establishes disputed issues of fact on this issue.
 21 *See* Ling Dep. 103:15-17, 104:1-5, 104:14-23, 105:2-6, 105:15-17 (describing
 22 the purpose of her visits as being to view the unit configurations so that she
 23 could evaluate potential modifications that might be necessary to make a unit
 24 accessible in light of her specific needs, to inquire about the status of her
 25 applications, and to convey her reasonable accommodation requests), 119:17-
 26 22 (no one from her group became angry or spoke in loud voices).

27 Legacy does not dispute the second and third elements of Ms. Ling’s
 28 *prima facie* case: that it took an adverse action against her and that there was a

causal connection between her protected activity—visiting NoHo 14 for the reasons discussed above—and its adverse action. Nor could there be any legitimate dispute as to these elements.

With respect to the second element (adverse action), Mr. Meredith’s decisions to call the police in order to have Ms. Ling and her companions removed from the property, thus terminating their attempt to view accessible units, were plainly adverse actions by Legacy.⁶ Addressing an analogous fact pattern in *Marton v. Lazy Day Property Owners Association, Inc.*, No. 2:10-cv-117, 2011 WL 1232375 (M.D. Fla. Mar. 30, 2011), the district court held that the plaintiff stated a viable claim under § 3617 where she alleged that the property owners’ association threatened to call law enforcement if her daughter continued to visit plaintiff on the premises. *Id.* at *2, *5; *see also Sofarelli v. Pinellas County*, 931 F.2d 718, 721-22 (11th Cir. 1991) (neighbors’ calling police supported § 3617 claim); *Neudecker v. Boisclair Corp.*, 351 F.3d 361, 364 (8th Cir. 2003) (plaintiff stated valid claim under § 3617 where property manager threatened to evict her for making complaints); *see also Walker*, 272 F.3d at 1129 (defining “interference” for purposes of § 3617 as “the act of meddling in or hampering an activity or process” (quoting *Webster’s Third New Int’l Dict.*, 1178 (14th ed. 1961))).⁷

⁶ Legacy assigned Mr. Meredith to be the property manager at NoHo 14. Meredith Decl. ¶¶ 2-3. Legacy is therefore liable for actions that Mr. Meredith took in his capacity as property manager. *See, e.g., In re Wells Fargo Residential Mortgage Lending Discrimination Litig.*, No. M:08-CV-1930, 2010 WL 3037061, at *3 (N.D. Cal. July 30, 2010) (“[T]raditional rules of vicarious liability apply’ to violations of [the] FHA.” (quoting *Holley v. Crank*, 400 F.3d 667, 670-74 (9th Cir. 2005)); *United States v. Habersham Props., Inc.*, 319 F. Supp. 2d 1366, 1375 (N.D. Ga. 2003) (citing *Meyer v. Holley*, 537 U.S. 280 (2003)); *Boswell v. Gumbaytay*, No. 2:07-CV-135, 2009 WL 1515872, at *3-*4 (M.D. Ala. June 1, 2009); *Chew v. Hybl*, No. C96-03459, 1997 WL 33644581, at *13 (N.D. Cal. Dec. 9, 1997) (similar, under FEHA); Cal. Civ. Code §§ 2295, 2330.

⁷ The Ninth Circuit has rejected the argument that § 3617 “require[s] a showing of force or violence [to establish] coercion, interference, intimidation, or threats.” *Walker*, 272 F.3d at 1128.

Nor is there any room for debate as to the third element—whether there is a causal connection between Ms. Ling’s protected activity and Legacy’s adverse action. Legacy, acting through Mr. Meredith, called the police while Ms. Ling was present at NoHo 14 in order to have her removed from the premises. The causal connection is direct and simultaneous with the protected activity. *Cf. Walker*, 272 F.3d at 1130 (finding evidence of a causal connection where defendant commenced its adverse action approximately two weeks after learning of plaintiff’s protected activity).

III. Legacy Has Not Established the Absence of Any Disputed Facts Regarding its Asserted Justification for Calling the Police.

Because Ms. Ling’s evidence is sufficient to establish a prima facie case of retaliation, the inquiry then shifts to whether Legacy has proffered an explanation for its challenged conduct and, if so, whether Ms. Ling has presented evidence from which a reasonable jury could find that Legacy’s asserted explanation is pretextual. *Walker*, 272 F.3d at 1128.

A. Legacy Asserts No Justification for the October 2009 Incident

In the Third Amended Complaint, Ms. Ling alleges that Legacy called the police to have her removed from the NoHo 14 premises on *two* occasions in the fall of 2009. Pl.’s Third Amended Compl. (Dkt. 141) ¶ 78. During her deposition she explained that these two incidents took place in October and November 2009. Ling Dep. at 113:7-9, 124:3-24; *see also* Ling Decl. ¶¶ 86, 90.

Legacy has not asserted any justification at all for the October 2009 incident when the police were called. It therefore has not met its burden of presenting evidence to rebut Ms. Ling’s prima facie showing with respect to that incident. In his Declaration, Mr. Meredith discusses and purports to justify one occasion when he called the police after Mr. Hunter reported that he believed he was being videotaped and another employee reported that Ms.

Ling was blocking the entrance and exist to the property. Meredith Decl. ¶¶ 12-14. Ms. Ling testified about the same incident and stated that it took place in November 2009. Ling Dep. 124:3-7. Legacy is therefore silent as to the first occasion, in October 2009, when it called the police to have Ms. Ling and her companions removed from the NoHo 14 premises. Ling Dep. 124:8-24; Ling Decl. ¶¶ 87-89. Summary judgment with respect to this incident must therefore be denied because Legacy has not met its burden to assert a legitimate justification, let alone to show the absence of any disputed facts concerning such a justification.

B. A Reasonable Jury Could Conclude from the Record that Legacy's Asserted Justification for the November 2009 Incident Is Pretextual

Legacy asserts that it called the police to have Ms. Ling removed from the premises during her November 2009 visit to NoHo 14 because Mr. Meredith was informed that "someone in [Ms. Ling's] group had videotaped the tour given by Mr. Hunter and was told by another employee "that Ms. Ling and her group had 'barricaded' the front door of the property, refusing to leave, and refusing to let anyone else enter." Meredith Decl. ¶ 12. Mr. Meredith states that he was "concerned that Ms. Ling and her group were impeding the property's ability to conduct business" and that he "decided to call the police to prevent Ms. Ling from further interrupting the business of the property." *Id.* ¶ 13.

Ms. Ling's deposition testimony places Mr. Meredith's statements squarely in dispute. First, Ms. Ling denies that anyone from her group was recording Mr. Hunter in any way. Ling Dep. 120:7-9, 121:3-6, 124:25-125:9; Ling Decl. ¶ 92. In contrast, Legacy has not presented any admissible evidence from which a jury might conclude that Mr. Hunter was being recorded. Mr. Meredith's statements about what Mr. Hunter told Mr. Meredith are classic hearsay and are inadmissible under Rule 802 of the

1 Federal Rules of Evidence. *See* Meredith Decl. ¶ 12. There is therefore no
2 admissible evidence from which a reasonable jury could find that Ms. Ling or
3 anyone from her group was recording Mr. Hunter, and Legacy has therefore
4 failed to demonstrate the absence of a genuine dispute. *Cf.* Fed. R. Civ. P.
5 56(c)(4).

6 Not only does Mr. Meredith lack personal knowledge of the events he
7 discusses in Paragraph 12 of his Declaration, but Ms. Ling’s testimony casts
8 substantial doubt on the legitimacy of Mr. Meredith’s statement as to what he
9 believed—which according to his own testimony Mr. Meredith did not attempt
10 to verify by conversing with Ms. Ling or her companions or conducting any
11 investigation—thus calling into question the validity of Legacy’s asserted
12 justification.

13 Second, and even more critically, there is conflicting evidence regarding
14 the circumstances of when and why Legacy called the police. Ms. Ling
15 testified that after Mr. Hunter indicated to the group that the tour was being
16 terminated, she and Ms. Soto took an elevator from an upper floor to the
17 lobby, and that when they reached the lobby, two police officers were already
18 there. Ling Dep. 115:20-25, 117:10-17; Ling Decl. ¶ 93. Ms. Ling further
19 testified that no one from Legacy had asked her to leave the building before
20 she reached the lobby and saw the police officers. Ling Dep. 117:10-17; Soto
21 Decl. ¶¶ 6-9. This testimony directly disputes Mr. Meredith’s statement that
22 he called the police *after* being informed that “Ms. Ling and her group had
23 ‘barricaded’ the front door of the property, refusing to leave, and refusing to
24 let anyone else enter.” Meredith Decl. ¶¶ 12-13 (stating that he “decided to
25 call the police” after receiving this report).

26 Once again, Legacy has not produced any admissible evidence that Ms.
27 Ling or anyone from her group was blocking any entrance or exit to the NoHo
28 14 property or refused to leave the property when asked to do so. Mr.

1 Meredith's statement that "another temporary employee . . . then *informed*
2 *me*" about the alleged barricade is pure hearsay and therefore fails the
3 requirements of Rule 56(c)(4) of the Federal Rules of Civil Procedure that
4 Legacy present "facts that would be admissible in evidence." Mr. Meredith's
5 hearsay statement is not admissible to show that Ms. Ling or her companions
6 were "interrupting the business of the property" or refused to leave the
7 property when asked to do so. Meredith Decl. ¶ 13. The undisputed
8 *admissible* evidence shows that Ms. Ling and her companions were taking a
9 tour of the development with a leasing agent, on an upper floor, and they
10 returned to the lobby with the leasing agent when he told them that the tour
11 was over. Ling Dep. 115:20-25, 117:10-17; Ling Decl. ¶ 93. This evidence
12 likewise casts doubt on the truth of Mr. Meredith's purported understanding of
13 what was happening at the time. He does not attest to having any personal
14 knowledge and did not attempt to verify his employee's report before calling
15 the police, facts from which a reasonable jury could find pretext.

16 In addition, Ms. Ling testified that she and her companions did not raise
17 their voices with any Legacy staff during this visit, Ling Dep. 119:17-22, and
18 Legacy has not presented any contrary admissible evidence. Combined with
19 the fact that the three members of her group were in wheelchairs, a reasonable
20 jury could easily find that their presence was not intimating or threatening to
21 any of Legacy's able-bodied leasing staff.

22 In sum, a reasonable jury could easily credit Ms. Ling's testimony over
23 Mr. Meredith's (to the limited extent he is able to testify from personal
24 knowledge about events that he did personally observe or investigate). The
25 record would therefore support a jury finding that Legacy's asserted
26 justification for calling the police during the November 2009 visit is pretextual
27 and that Legacy's real motivation was retaliatory, making summary judgment
28 on her retaliation claim improper. *See Walker*, 272 F.3d at 1131.

1 To the extent that Legacy asserts that its conduct in calling the police to
2 have Ms. Ling removed from the NoHo 14 premises was authorized under
3 state property law, it does not develop this argument with supporting
4 authorities. Moreover, any such unspecified and unsupported tenets of state
5 property law would not justify conduct intended to intimidate and interfere
6 with Ms. Ling's exercise of federally protected rights. A defendant may not
7 defeat liability under the Fair Housing Act in reliance on conflicting state law.
8 *See* 42 U.S.C. § 3615 (“[A]ny law of a State, a political subdivision, or other
9 such jurisdiction that purports to require or permit any action that would be a
10 discriminatory housing practice under this subchapter shall to that extent be
11 invalid.”). The Fair Housing Act does not authorize managers or owners of
12 private property to restrict access to their properties for reasons that are
13 discriminatory or intended to interfere with the exercise of rights protected
14 under the Act.

CONCLUSION

For the foregoing reasons, Ms. Ling respectfully requests that the Court deny Legacy's Motion for Summary Judgment and that it allow her to present her reasonable accommodation and retaliation claims against Legacy to the jury.

1 Dated: October 1, 2012

2 Respectfully submitted,

3 /s/ Jamie L. Crook

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**CERTIFICATE OF SERVICE
CENTRAL DISTRICT OF CALIFORNIA**

I hereby certify that on this 1st day of October, 2012, I filed the foregoing Plaintiff's Opposition to Legacy Partners Residential, Inc.'s Motion for Summary Judgment and accompanying documents using the Court's CM/ECF filing system, which shall serve as notice of such filing on the following counsel of record:

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